

interstate commerce for both electricity and gas and must approve mergers of utilities. FERC also has authority to police the manipulation of electricity and gas markets, granted by the Congress in 2005 as a response to Enron's manipulation of electricity markets in the West. The States have that same authority for retail sales both with regard to electricity and natural gas. There are tight rules for transactions among affiliates of holding companies in these industries. There are extensive transparency and reporting requirements for contracts and transactions. This is all intended to be sure that the customers of utilities are getting what they are paying for and that they are paying rates that, in fact, are just and reasonable.

The concern has been that the exclusive jurisdiction of the CFTC under the Commodities Exchange Act could be interpreted to supersede the regulation by FERC of important aspects of these industries.

The amendment I am offering with my cosponsors is a proposed solution that I believe is consistent with the philosophy of consumer protection that underlies other parts of the bill we are considering. The effect is simple. This amendment preserves the authority of both the Federal Energy Regulatory Commission and the individual States to ensure that electricity and natural gas rates are just and reasonable, and in the case of FERC, to prevent market manipulation that could affect prices.

Direct examination of prices is central to each agency's mission. In FERC's case, this authority is longstanding; it was established over 70 years ago. Without this amendment, a critical check on energy prices could be lost, and this is so for two obvious reasons: First, the CFTC's so-called "exclusive jurisdiction" could be interpreted to operate to prevent FERC and State public utility commissions from acting, where their jurisdictions intersect the CFTC's jurisdiction. Second, the CFTC's regulatory mission differs significantly from that of the FERC and the State public utility commissions. The Commodity Futures Trading Commission's mission is to protect market participants and promote fair and orderly trading. It doesn't directly examine commodity prices in its markets, nor does it consider the reasonableness of rates. While properly functioning futures markets are important, the CFTC cannot duplicate the direct ratepayer protections provided by the FERC and by the State public utility commissions.

There are some things this amendment does not do that it has been charged with doing. First, it doesn't give FERC jurisdiction over futures, swaps, or options. FERC has jurisdiction over rates for the sale of electricity and gas and contracts that are associated with those sales. Derivatives that are related are still jurisdictional to the Commodity Futures Trading Commission. Nothing changes in

that regard. We are merely preserving that authority that the Federal Power Act and the Natural Gas Act gave to FERC decades ago and in the Energy Policy Act of 2005. Second, the amendment doesn't give FERC jurisdiction over NYMEX or ICE or any other futures exchanges. They are not public utilities. They do not sell electricity or natural gas.

As I have said, I support this bill generally. I believe it is essential in ensuring that consumers are protected. However, both I and my cosponsors strongly believe it is necessary to preserve enduring consumer protections that might otherwise be lost.

It is a simple, tailored amendment that doesn't create any loopholes in jurisdiction. It also does nothing to diminish the ability of the CFTC to regulate commodity exchanges such as NYMEX or to require public disclosure of swaps or any other public authority they have to regulate the mechanics of commodity markets, including those who trade energy commodities.

We have received letters of support for this amendment from the National Association of Regulatory Utility Commissioners, the FERC, utility industry companies and associations, including Edison Electric Institute, the American Public Power Association, the American Public Gas Association, the Electric Power Supply Association, the American Wind Energy Association, the California Independent System Operator, the American Gas Association, the Large Public Power Council, the Natural Gas Supply Association, Compete, and PJM Interconnection.

I ask unanimous consent to have printed in the RECORD the letters of support I have referred to following my statement.

**THE PRESIDING OFFICER.** Without objection, it is so ordered.

(See exhibit 1.)

**MR. BINGAMAN.** Mr. President, I have also been informed that the administration supports this amendment. I advise my colleagues that is the case as well.

Once again, I thank my cosponsors and urge my colleagues to support the amendment. I gather that a time will be found during our deliberations of the bill to consider the amendment.

With that, I yield the floor.

MAY 11, 2010.

**HON. HARRY REID,**  
*Majority Leader, U.S. Senate,*  
*Washington, DC.*

**HON. JEFF BINGAMAN,**  
*Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

**HON. LISA MURKOWSKI,**  
*Ranking Member, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

**DEAR LEADER REID, CHAIRMAN BINGAMAN AND RANKING MEMBER MURKOWSKI:** We are writing in support of your amendment to S. 3217, the Restoring American Financial Stability Act, which would preserve the authority of the Federal Energy Regulatory Commission (FERC) and the states to ensure just and reasonable rates for electricity and natural gas consumers. The undersigned asso-

ciations represent most of the electricity and natural gas consumers in the United States.

FERC and the states already regulate transactions, products, services and agreements in wholesale and retail electricity and natural gas markets, respectively. In addition, FERC regulates regional transmission organizations (RTOs) and independent system operators (ISOs), which are responsible for the planning and operation of the transmission grid in many areas of the country. There is no regulatory gap that needs to be filled with respect to the transactions, agreements, contracts, products and services that regulated energy companies provide.

The underlying derivatives language in the Senate financial reform bill could cause the Commodity Futures Trading Commission to assert jurisdiction to regulate products offered in wholesale electricity markets, such as financial transmission rights (FTRs), which are used to manage the cost of transmission congestion. This could affect the ability of our member companies and utilities to have continued access to FTRs and other products on reasonable terms and conditions, which is essential to their ability to reliably serve their retail consumers at reasonable rates and with less price volatility.

We thank you and the other co-sponsors of this amendment for recognizing and addressing this issue. While a more clear delineation of FERC's authority would be helpful, we believe this amendment is a significant step in the right direction, and we look forward to passage of the amendment and continuing dialogue on this issue as financial regulatory reform legislation moves forward in Congress.

Sincerely,

American Gas Association; American Public Power Association; American Wind Energy Association; California ISO; COMPETE; Edison Electric Institute; Electric Power Supply Association; Large Public Power Council; Natural Gas Supply Association; PJM Interconnection, L.L.C.

FEDERAL ENERGY REGULATORY COMMISSION, OFFICE OF THE CHAIRMAN,

Washington, DC, May 12, 2010.

**HON. JEFF BINGAMAN,**  
*Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

**HON. LISA MURKOWSKI,**  
*Ranking Member, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

**DEAR CHAIRMAN BINGAMAN AND RANKING MEMBER MURKOWSKI:** I write in support of your bipartisan amendment No. 3892 to amendment No. 3739 to S. 3217, the financial regulatory reform legislation currently being debated by the Senate.

Your amendment preserves existing Federal Energy Regulatory Commission (FERC) authority to protect energy consumers from rate increases and in no way allows FERC to supersede the regulatory jurisdiction of the Commodity Futures Trading Commission (CFTC) with respect to the markets or instruments the CFTC now regulates, especially futures markets. Any suggestion to the contrary flies in the face of the plain language of your amendment.

As you know, FERC is the only federal agency charged with regulating physical electricity and natural gas markets for "just and reasonable rates". But the broad jurisdiction the underlying legislation grants to the CFTC over "swaps" could undermine FERC's ability to regulate the electricity and natural gas markets and thus lead to increased costs to consumers, because CFTC has no ratemaking authority. Your amendment rightly maintains FERC's ratemaking